

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

KURT COFANO

Criminal No. 20-154

**POSITION WITH RESPECT TO SENTENCING FACTORS**

AND NOW, comes the United States of America, by its attorneys, Stephen R. Kaufman, Acting United States Attorney for the Western District of Pennsylvania, and Cindy K. Chung and Jonathan Lusty, Assistant United States Attorneys for said district, and respectfully submits the government's position with respect to sentencing factors, in accordance with the United States Sentencing Commission, Guidelines Manual, Section 6A1.2.

Government counsel has received and reviewed the contents of the Presentence Investigation Report (PSIR) for the above-captioned case. Government counsel has no objections or requests for modification to the PSIR.

The Government further submits that Probation did not err in calculating the defendant's base offense level as 20. Even if Probation were to disregard the conduct charges at Counts 2 and 5, the defendant's own admissions regarding his marijuana use would support Probation's findings (see PSIR at ¶¶ 47 and 61). Our precedent confirms, however, that "personal information given during a routine presentence interview" admitting to drug use contemporaneous with the time of the offense satisfies the "unlawful user" test. See, e.g., United States v. Jarman, 144 F.3d 912, 916 (6th Cir.1998); United States v. Nevarez, 251 F.3d 28, 30 (2d Cir.2001) (upholding enhancement when defendant conceded "that he used illegal drugs over almost a 30 year period-interrupted only by his arrest"); United States v. Dillard, 648 F. App'x 564, 567 (6th Cir. 2016).

In addition, marijuana was recovered from the defendant's car at the time of his arrest and from his home, multiple partially smoked marijuana cigarettes, as well as a pipe consistent with methamphetamine use, were recovered.

Wherefore, the government respectfully submits its position with respect to sentencing factors.

Respectfully submitted,

STEPHEN R. KAUFMAN  
Acting United States Attorney

s/ Cindy K. Chung

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Assistant U.S. Attorney  
PA ID No. 317227

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served, on this date, a copy of the Government's Position with Respect to Sentencing Factors to the defendant at:

Kurt Cofano  
Inmate Reg. No. 04811-509  
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s/ Cindy K. Chung  
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